

REMARKS

In the Office Action mailed on August 6, 2008, claims 1-7, 9-28, 30-41, and 43-50 were rejected. By this amendment, claims 1, 12, 13, 22, 37 have been amended. Claims 1-7, 9-28, 30-41, and 43-50 remain pending. Applicants request reconsideration of the pending claims in view of the following remarks.

I. MPEP 2106 II.C

In the Examiner's Note in paragraph 5 of the Office Action, the Examiner states, citing MPEP 2106 II.C, that "language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure, does not limit the scope of the claim or the claim limitation." Examiner further points out that "it will be considered that the methodology is complete on the first pass and that further iteration is not required."

Claims 1, 22, and 37 have been amended to clarify that the optimized profile model is modified at least once by selecting at least one profile parameter of the optimized profile model to eliminate or fix to a value.

II. Claim Rejections 35 USC §102

Claims 1-7, 9-28, 30-41, and 43-50 were rejected under 35 USC 102(e) as being anticipated by Doddi et al. ("Doddi", US Pub. No. 2004/0267397).

In response to Applicant's arguments filed on July 18, 2008, the Examiner referenced MPEP 2106 II.C and stated that "since the criteria identified in claims 1 e), 12 i), 13, 22 e), and 37 'wherein' are optional, such criteria will not be examined." However, as set forth above, claims 1, 22, and 37 have been amended to clarify that the identified claim feature (modifying the optimized profile model) is not optional and should be considered by the Examiner.

In particular, claims 1, 22, and 37 recite that the optimized profile model is modified by eliminating at least one profile parameter or fixing to a value at least one profile parameter. Claims

1, 22, and 37 also recite that the profile parameters of the optimized profile model characterize the structure to be examined.

In an earlier final Office Action, the Examiner cited to Doddi paragraph [0047] as disclosing “eliminating or fixing to a value at least one profile parameter.” However, paragraph [0047] discloses dividing profiles to be generated into two or more partitions and training a machine learning system for each partition. (Paragraph [0047], lines 1-9.) The partitioning is used so “that parallel processing can be used” or that each machine learning system may be more accurate. (Paragraph [0047], line 9-19.) Thus, Doddi does not disclose modifying the optimized profile model by eliminating at least one profile parameter or fixing to a value at least one profile parameter, as recited in independent claims 1, 22, and 37.

Therefore, Applicants assert that claims 1, 22, and 37 are allowable over Doddi. Applicants also assert that claims 2-7, 9-21, 23-28, 30-36, 38-41, and 43-50 are allowable for at least the reason that they depend from allowable independent claims.

III. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 509982005900. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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